No. 74-1267

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO,

Appellants

v.

MARIA C. FLORES DE OTERO,

Appellee

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD,

Appellants

v.

SERGIO PEREZ NOGUEIRO,

Appellee

On Appeal from the United States District Court for the District of Puerto Rico

JURISDICTIONAL STATEMENT

MIRIAM NAVEIRA DE RODON
Solicitor General

PETER ORTIZ GUSTAFSON
Deputy Solicitor General

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes Involved	3
Statement	3
The Questions Are Substantial	7
Summary of Argument	7
A. The Court Below Erred in Holding That It Had Jurisdiction Founded upon 42 U.S.C. 1983 and 28 U.S.C. 1343	8
B. The District Court Should Have Abstained from Reaching the Merits of the Constitutional Claim	12
C. The Court Erred in Applying the Compelling State Interest to the Commonwealth Statutes and/or It Erred in Rejecting the Justification Advanced by Appellants	15
Conclusion	19

CONTENTS OF APPENDIX

A. Judgment, Opinion and Dissenting Opinion of the United States District Court for the District of Puerto Rico	1a
B. Memorandum and Order and Judgment of the United States District Court for the District of Puerto Rico	6a
C. Notice of Appeal, January 22, 1975	8a
D. Notice of Appeal, March 10, 1975	9a
E. Statutes Involved, 20 L.P.R.A. 689	10a

TABLE OF CITATIONS

Page

CASES:

Acevedo Montalvo v. Hernández Colón, 377 F. Supp. 133 12
Arias v. Examining Board of Refrigeration and Air Condition Technicians, 353 F. Supp. 857 (DPR 1972) 5
Balzac v. Puerto Rico, 258 U.S. 298, 66 L. ed. 627, 42 S. Ct. 343 (1922) 10
Brown v. Pitchess, California Supreme Court, 2/19/75, 16 Cr. L. 2516 9
Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 94 S. Ct. 2080, 40 L. ed. ed 452, reh. den. 417 U.S. 977, 94 S. Ct. 3187, 41 L. ed. 2d 1148 ....2, 7, 8, 10, 11, 12, 13, 16
Caribtow Corp. v. Occupationai Safety and Health Review Comm., 493 F. 2d 1064 (1 CA, 1974) 10
Dandridge v. Williams, 397 U.S. 471, 25 L. ed. 2d 491, 90 S. Ct. 1153 (1970) 19
District of Columbia v. Carter, 409 U.S. 418, 34 L. ed. 2d 613, 93 S. Ct. 602, reh. den. 410 U.S. 959, 35 L. ed. 2d 694, 93 S. Ct. 1411 (1973) 9, 10, 12
Espinosa v. Farah Manufacturing Co., 414 U.S. 86, 38 L. ed. 2d 287, 94 S. Ct. 334 (1973) 6, 18, 19
Fornaris v. Ridge Tool Co., 400 U.S. 41, 27 L. ed. 2d 174, 91 S. Ct. 156 (1970) 7, 10, 11, 12, 13, 14
Harris County Comm. Court, et al. v. Moore, Feb. 18, 1975, 43 LW 4222 .....12, 13
Hodgson v. Union Empleados de los Supermercados Pueblo. 371 F. Supp. 56 (DPR 1974) 10, 12
In Re Griffiths, 413 U.S. 717, 93 S. Ct. 2851, 37 L. ed 2d 910 (1973) 3, 6, 15, 19
Liquilux Gas Services of Ponce, Inc. v. Tropical Gas Co., 303 F. Supp. 414 (DPR 1969) 10
Marín v. U.P.R., 377 F. Supp. 613 (DPR 1973) 12
Mongil Suárez v. Administrador Deuporte Hípico, 354 F. Supp. 320 (DPR, 1972) 9
Mora v. Mejías, 206 F. 2d 377 (1953) 12

Page

Mora v. Torres, 113 F. Supp. 309, 319 (DPR 1953) .. 12
N.L.R.B. v. Security National Life Insurance Co., 494 F. 2d 336 10
Ortiz v. Colón, Case No. 74-1115 12
Palmore v. United States, 411 U.S. 389, 36 L. ed. 2d 342, 93 S. Ct. 1670 10
Ramos v. United States Civil Service Comm., 376 F. Supp. 361 (DPR 1974), appeal filed 43 LW 3173. .15, 19
Sánchez v. United States, 376 F. Supp. 239 (DPR 1974) 12
Sugarman v. Dougall, 413 U.S. 634 (1973), 37 L. ed. 2d 910, 93 S. Ct. 2842 .....15, 19
Wackenhut Corp. v. Aponte, 386 U.S. 268, 18 L. ed. 2d 37, 87 S. Ct. 1017 (1967) 7, 13
Wong Sun v. Hampton, 500 F. 2d 1031 (9 CA 1974), cert. granted 41 L. ed. 2d 664 15
Zwickler v. Koota, 389 U.S. 241, 248-50 (1967) 5, 8, 14

CONSTITUTION AND STATUTES:

Puerto Rico Statutes

20 L.P.R.A. 689 .....2, 3, 4
31 L.P.R.A. 4124 6
4 L.P.R.A. 62 9

Civil Rights Statutes 11
Section 1 of Art. 1 of the Constitution 13
Art. II, Sec. 13
Public Law 88-271 of February 20, 1964 14
Law Number 9 of April 13, 1964 14
Art. 1483 of the Civil Code 12, 13, 18
17 L.P.R.A. 501 to 519, as amended by Law 116 of June 7, 1973 18

United States Statutes

28 U.S.C. 1343(3) and (4) 2, 3, 5, 7, 8, 10, 12
28 U.S.C. 2281 .....2, 11
28 U.S.C. 1253 2
28 U.S.C. 1257 .....10, 11
42 U.S.C. 1983 .....5, 8, 9, 10

	Page
28 U.S.C. 1331	8
48 U.S.C. 731d	10
48 U.S.C. 734	11
United States Constitution	
Fifth Amendment	4, 11, 15
Fourteenth Amendment	4, 8, 9, 11, 15
Art. 1, Sec. 8, cl. 17 of the Constitution	10
MISCELLANEOUS:	
Leibowitz, The Applicability of Federal Law to the Commonwealth of Puerto Rico, 56 GEO, L. J. 219 (1967)	11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No.

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO,

Appellants

v.

MARIA C. FLORES DE OTERO,

Appellee

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD,

Appellants

v.

SERGIO PEREZ NOGUEIRO,

Appellee

On Appeal from the United States District Court for the District of Puerto Rico

JURISDICTIONAL STATEMENT

TO THE HONORABLE COURT:

Appellants take these appeals from the judgments of the United States District Court For the District of

Puerto Rico, entered on December 19, 1974 [1] and February 5, 1975, [2] respectively, declaring unconstitutional and permanently enjoining the enforcement of the statute requiring that the applicants be citizens of the United States in order to be granted a full license as engineers, architects and surveyors. 20 L.P.R.A. 689. Appellants submit this statement to show that the Supreme Court of the United State has jurisdiction over the appeals and that substantial questions are presented.

OPINIONS BELOW

The opinions of the District Court For the District of Puerto Rico are not yet reported. Copies of the opinions and judgments are attached hereto. (Appendix A and Appendix B)

JURISDICTION

These suits were brought under 28 U.S.C. 1343(3) and (4) to redress the alleged deprivation of appellees' constitutional rights. Three-judge courts were convened pursuant to 28 U.S.C. 2281. The judgments of the District Court were entered on December 19, 1974 and February 5, 1975 and Notices of Appeal were filed on January 22, 1975 and March 10, 1975, respectively (Appendices C and D). The jurisdiction of this Honorable Court to review the judgments is conferred by Title 28, United States Code, Section 1253. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 94

[1] *María C. Flores de Otero* v. *Examining Board, etc.* Civil No. 917-73.

[2] *Sergio Pérez Noqueiro* v. *Board of Examiners, etc.* Civil No. 74-520.

S.Ct. 2080, 40 L.ed. 2d 452, reh. den. 417 U.S. 977, 94 S.Ct. 3187, 41 L.ed. 2d 1148.[3]

QUESTIONS PRESENTED

1. WHETHER THE DISTRICT COURT HAD JURISDICTION OVER THESE COMPLAINTS PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 1343 (3)(4).

2. WHETHER THE DISTRICT COURT SHOULD HAVE ABSTAINED FROM PASSING UPON THE INTERPRETATION AND VALIDITY OF THE STATUTE INVOLVED.

3. (a) WHETHER THE STRICT TESTS OF JUDICIAL SCRUTINY REGARDING 'STATE' CLASSIFICATIONS OF ALIENS IS FULLY APPLICABLE TO STATUTES ENACTED BY COMMONWEALTH LEGISLATURE, OR

(b) IF THEY ARE APPLICABLE, WHETHER THE STATUTE HEREIN COMPLIES WITH THE CRITERIA SET FORTH IN *In Re Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.ed. 2d 910 (1973).

STATUTES INVOLVED

The statute, 20 L.P.R.A. 689, can be found at Appendix E, and is officially reported at pages 226 to 228 of the 1973 Supplement to Volume 4A of the Laws of Puerto Rico Annotated.

STATEMENT [4]

María C. Flores de Otero is a native of Mexico, not a citizen of the United States and resides in Puerto Rico. Her applications for registration as a licensed engineer

[3] Because there are two cases appealed from the same court involving identical questions, this single jurisdictional statement suffices. Rule 15(3) of this Court.

[4] The cases were submitted on the pleadings and memoranda filed by the parties. No evidentiary hearing was held.

were denied on the basis of her lack of United States citizenship. She brought an action in the United States District Court for the District of Puerto Rico seeking that section 689 be adjudged unconstitutional for being in conflict with the due process and equal protection clauses. The complaint did not specify which Amendment, the Fifth or Fourteenth of the United States Constitution is applicable. She also sought injunctive relief. A Three-Judge Court was convened and it entered judgment in her favor.

Sergio Pérez Nogueiro is a native of Spain who is residing as an alien in Puerto Rico. He is presently working as an engineer for the Municipality of Carolina pursuant to a conditional license granted by the Board, as authorized by the statute. He brought this action seeking a full unconditioned license to practice as an engineer in the Commonwealth. Judgment was entered on his favor, on the basis of the prior judgment in the María C. Flores de Otero case.

Section 689 provides that in addition to the educational and experience requirements, it shall be required that applicants for registration be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for no less than a year before filing of their applications.[5] It further provides that the citizenship requirement shall not apply to applicants who have studied the total courses and have received their grade or certificate in the Commonwealth. The citizenship requirement does not apply to applicants whom the agencies and instrumentalities of the Commonwealth Government, its municipalities

[5] The residence requirement is not here contested.

and public corporations employ or wish to employ.[6] These aliens are granted a conditional certificate to practice their professions in those public entities.

In its opinion the District Court found jurisdiction upon 42 U.S.C. 1983 and 28 U.S.C. 1343.[7] It refused to abstain and wait for an interpretation by the Commonwealth courts because in its view the citizenship requirement is clear and unmistakable and no conceivable gloss placed upon it by the local courts could turn aside the argument that the classification is unconstitutional. The Court cited in support of its conclusion, *Zwickler* v. *Koota,* 389 U.S. 241, 248-50 (1967), and *Arias* v. *Examining Board of Refrigeration and Air Cond. Technicians,* 353 F. Supp. 857 (D.P.R. 1972).

On the merits, the District Court applied the strict test used by this Honorable Court in *In Re Griffiths,*

[6] They do not have to be employed by the government and its agencies at the time of the application and examination.

[7] These statutes provide:

§ 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

§ 1343

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote".

413 U.S. 717, 37 L. Ed. 2d 910, 93 S. Ct. 2851 (1973), which held that a State classification based upon alienage is suspect even if used to regulate entry to a profession, and the State has to show a compelling interest which is both constitutional, permissible and substantial and that the classification is necessary to achieve the purpose or safeguard its compelling interest. By using such a strict test, the Court found that the interest invoked by the Commonwealth did not justify the classification. It rejected the argument that the Commonwealth had to protect itself against an uncontrollable invasion of alien engineers. It also held that the classification had no reasonable relationship with Article 1483 of the Civil Code, 31 L.P.R.A. 4124.[8] Said article imposes liability upon contractors for damages caused by them within ten years of the construction of the building work, etc.

The Court also rejected the contention that this Court had repudiated its holding in *In Re Griffiths, supra,* and similar cases, when it decided *Espinosa* v. *Farah Manufacturing Co.,* 414 U.S. 86, 38 L. ed. 2d 287, 94 S. Ct. 334 (1973).

Thus the decisions declared the statute invalid; enjoined appellants from enforcing it and ordered them to grant unconditioned licenses to appellees.

---

[8] Said Article reads as follows:

"The contractor of a building which may have been destroyed by reason of defects in the construction shall be liable for the losses and damages if said building should collapse within ten years, to be counted from the completion of the construction; and during the same time the same liability shall be incurred by the architect who may have directed the work if the collapse is due to defects in the ground or in the direction.

If the cause should be the noncompliance of the contractor with the conditions of the contract, the action for indemnity may be brought within fifteen years".

THE QUESTIONS ARE SUBSTANTIAL

Summary of Argument

This Honorable Court should note probable jurisdiction and decide the question presented due to their importance in the field of the existing relationship between the United States and the Commonwealth of Puerto Rico.

a. The question as to whether Commonwealth statutes are State statutes under 28 U.S.C. 1343 was expressly left open in *Calero-Toledo* v. *Pearson Yacht Leasing Co., supra.* Since there is no other jurisdictional basis for the actions in these cases, this appeal provides a particularly adequate opportunity to this Court to definitely pass upon that previously undecided question. We respectfully submit that the District Court had no jurisdiction over these cases.

b. We also contend that the District Court erroneously declined to abstain in this case. Our position is that the abstention doctrine is particularly appropriate when Commonwealth statutes are challenged in the Federal Courts. That conclusion is evident from the holdings in *Fornaris* v. *Ridge Tool Co.,* 400 U.S. 41, 27 L. ed. 2d 174, 91 S. Ct. 156 (1970); *Wackenhut Corp.* v. *Aponte,* 386 U.S. 268, 18 L. ed. 2d 37, 87 S. Ct. 1017 (1967), affirming judgment in 266 F. Supp. 401 (DPR 1966), and *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663, 94 S. Ct. 2080, 40 L. ed. 2d 452 (1974).

c. On the merits of the constitutional question, we submit that the strict test of compelling state interest to justify a clasification is not appropriate in the case herein. As has been recognized by this Court, the Commonwealth enjoys a special unique relationship with the United States which warrants the application of far

less strict tests of interpretation of its local statutes. If the Court considers the different situation in Puerto Rico, in light of the local realities which include the large concentration of Spanish speaking aliens, extreme overpopulation and the largest unemployment rate in the United States, then it will find that the classification is both necessary and valid.

A. The Court Below Erred in Holding That It Had Jurisdiction Founded upon 42 U.S.C. 1983 and 28 U.S.C. 1343.

In *Calero-Toledo, supra,* 40 L. ed. 2d at 464, fn. 11, this Court expressed that:

> "We have no occasion to address the question whether Puerto Rico is a 'State' for purposes of 28 U.S.C. 1343 [28 USCS 1343], a jurisdictional basis of appellee's complaint".

It did not reach the question because jurisdiction was found to exist under 28 U.S.C. 1331. In these cases the only jurisdictional basis is 28 U.S.C. 1343. This by itself establishes that this question is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for its resolution. Section 1343 came into being as part of the Civil Rights Acts enacted during the late 1860's and 1870's. It was one of the means established to award jurisdiction to the federal courts over actions against the State to redress deprivation of constitutional rights which were mostly uncontrolled after the Civil War. Together with the predecessor of 42 U.S.C. 1983, it was enacted to vindicate rights protected by the Fourteenth Amendment. For a historical view of 1343, see *Zwickler* v. *Koota,* 389 U.S. 241, 88 S. Ct. 391, 19 L. ed. 2d 444 (1967).

In this case jurisdiction under 1343 depends upon the applicability to the Commonwealth of Article 1 of

the Civil Rights Act, 42 U.S.C. 1983. *District of Columbia* v. *Carter,* 409 U.S. 418, 34 L. ed 2d 613, 93 S. Ct. 602, reh. den. 410 U.S. 959, 35 L. ed. 2d 694, 93 S. Ct. 1411 (1973), held that the District of Columbia was not a "State or Territory" within the purposes of 42 U.S.C. 1983 and that the District Court lacked jurisdiction over a claim based upon that section. The Court made a complete historical analysis of the Civil Rights Acts and found that 1983 was enacted as a means to "enforce the provisions of the Fourteenth Amendment", *Carter, supra,* 34 L. ed. 2d at 619. Since the District is not a State within the meaning of the Fourteenth Amendment, neither the District nor its officers are subject to its restrictions. Thus this Court held that section 1983 is not applicable to the District. This was based upon an extensive examination of the legislative history of 1983 and the nature of the District of Columbia.

As to the legislative history of section 1983, there is no question that the evils which it sought to correct were never present in Puerto Rico. On the contrary both before and after the birth of the Commonwealth in Puerto Rico, the local courts have had the power and the willingness to protect and enforce federal rights. See *Mongil Suárez* v. *Administrador Deporte Hipico,* 354 F. Supp. 320 (DPR, 1972); 4 L.P.R.A. 62.[9]

Like the District, the Commonwealth is truly *sui generis* within the national governmental structure,

---

[9] 4 LPRA 62 reads as follows:

> "The Court of First Instance is a court of original general jurisdiction with power to act in the name and by the authority of the Commonwealth of Puerto Rico in all civil and criminal proceedings as hereinafter provided. . . ."

Note that the state courts can decide civil rights actions. *Brown* v. *Pitchess,* California Supreme Court, 2/19/75, 16 Cr. L. 2516.

Carter, supra, 34 L. ed. 2d at 625. It is significant that this Court has compared the nature of the District with that of the Commonwealth. *Palmore* v. *United States,* 411 U.S. 389, 36 L. ed. 2d 342, 93 S. Ct. 1670, where this Court recognized that the District of Columbia is constitutionally distinct from the States. As it did in *Fornaris, supra,* this Court held that a statute of the District is not a State statute for the purpose of 28 USC 1257. The Court also held that the rationale of *Balzac* v. *Porto Rico,* 258 U.S. 298, 66 L. ed. 627, 42 S. Ct. 343 (1922), that a Puerto Rican statute was a State statute for purposes of appeal was severely undermined in *Fornaris.* The situation herein is similar to the one present in *Fornaris* and *Palmore.* That is, sections 1983 and 1343 should not be held applicable to the Commonwealth in the absence of a more definitive guidance from Congress. *Palmore,* 36 L. ed. 2d., at page 351.

Although the source of congressional power over the District (Art. 1, sec. 8, cl. 17 of the Constitution) is different than the one in Puerto Rico, both possess different traits than the States or Territories. The source of congressional power over the Commonwealth is the compact between the United States and Puerto Rico (Public Law 600, 64 Stat. 319; 66 Stat. 327, note 48 U.S.C. 731 d.) *Calero-Toledo, supra.* Thus the question as to whether a particular congressional enactment is applicable to Puerto Rico has to be answered in terms of the Compact; that is, whether their applicability is consonant with the Compact. See *Caribtow Corp.* v. *Occupational Safety and Health Review Comm.,* 493 F. 2d 1064 (1 CA, 1974); *N.L.R.B.* v. *Security National Life Ins. Co.,* 494 F. 2d 336; *Hodgson* v. *Union Empleados de los Supermercados Pueblo,* 371 F. Supp. 56 (DPR 1974); *Liquilux Gas Services of Ponce, Inc.* v.

Tropical Gas Co., 303 F. Supp. 414 (DPR 1969), and cases cited therein. And see, Leibowitz, The Applicability of Federal Law To The Commonwealth of Puerto Rico, 56 GEO. L. J. 219 (1967).

That same flexible approach has been used by this Court. Compare *Fornaris* v. *Ridge Tool Co., supra* (Puerto Rico not a State for the purposes of this Court's appellate powers, 28 U.S.C. 1257), and *Calero-Toledo, supra* (Puerto Rico is a State for the purposes of the Three-Judge-Court Act, 28 U.S.C. 2281). In neither of this two cases did this Court find it necessary to express whether the Fifth or Fourteenth Amendment is applicable to Puerto Rico.

Thus the question of the applicability of the Civil Rights Statutes, depends upon an interpretation of the Compact and the pertinent statutes. This Court recognized in *Calero-Toledo* that the Compact had brought about significant changes in Puerto Rico's governmental structures, the main one being a much higher degree of autonomy and sovereignty over purely local matters. This novel political experiment strengthened the relationship between Puerto Rico and the Federal government and has turned the Island into a highly unique and *sui generis* structure within the United States federal system. It would be inconsistent with the deference shown by Congress and this Court, to Puerto Rico's government and with the nature of the political structure brought about by the Compact, to subject all the local statutes and actions to the strict supervisory powers of the federal courts.[10]

---

[10] Although Puerto Rico possesses a higher degree of sovereignty than the District, Congress still possesses power to legislate over it, due to the provision of the Federal Relations Act, 48 U.S.C. 734, which continued in effect by virtue of the Compact.

Because Puerto Rico is not a "State" within the full meaning of that term; *Fornaris, supra, Sánchez* v. *U.S.*, 376 F. Supp. 239 (DPR 1974); *Mora* v. *Torres*, 113 F. Supp. 309, 319 (DPR 1953); or a Territory, within the constitutional context used in the *Carter* case, *Acevedo Montalvo* v. *Hernández Colón*, 377 F. Supp. 133, *Hodgson, supra*, neither the Civil Rights Acts, 42 U.S.C. 1981, 1983, nor their jurisdictional counterpart, 28 U.S.C. 1343, are applicable to Puerto Rico.[11]

B. The District Court Should Have Abstained from Reaching the Merits of the Constitutional Claim.

The Court below declined to abstain because the statute was clear and free from doubt. As this Court recently held, *Harris County Comm. Court, et al.* v. *Moore*, February 18, 1975, 43 LW 4222, abstention is appropriate where the uncertain status of local law stems from the unsettled relationship between the state constitution and a statute. In the case at bar the relationship is two fold. First of all, appellants argued that the classification excluding aliens is justified by the provisions of Article 1483 of the Civil Code, which deals with causes of action against engineers, architects, etc. It is evident that there is a significant relationship

[11] This contention has been rejected by the local district court, *Marin* v. *U.P.R.*, 337 F. Supp. 613 (DPR 1973) and the Court of Appeals for the First Circuit, *Ortiz v. Colón*, Case No. 74-1115, unpublished opinion of February 28, 1975, but we submit that they did not fully consider the question. Of course this Honorable Court should have the final word in this matter. They were mainly based upon their preoccupation that the residents of Puerto Rico would have less protection than their counterparts in the 50 States. But as expressed in *Mora* v. *Mejías*, 206 F.2d 377 (1953), cited with approval in *Calero-Toledo, supra*, 40 L.Ed. 2d at 461-62, Puerto Rico has not become State like the other States. See also *Sánchez* v. *U.S., supra*, holding Puerto Ricans have no right to vote in presidential elections. This is one of the differences in treatment between residents in Puerto Rico and the 50 States.

between the two. But it is uncertain whether the exclusion is justified, under local law, by the Civil Code provisions. No pertinent decision by the local court exists which deals with the question whether the exclusion is necessary to give effect to the protections established by Article 1483. There is also a close relationship between the statute and the local Constitution. The local Court has not had the opportunity to analyze, in the context of this case, the scope of section 1 of Article I of our Constitution which establishes that "No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas".

The Supreme Court of Puerto Rico should have the opportunity of interpreting whether the statutory exclusion conflicts with this prohibition against discrimination due to birth or origin, together with the general clause as to equal protection of the laws. Article II, section 7 of the Constitution and whether it is justified by the Civil Code provision.

We submit that the *Moore* decision, *supra*, has expanded the abstention doctrine in a manner favorable to the States. This is more so in the case of Puerto Rico, where this Court has consistently used a far more liberal test in favor of the local construction of its laws. *Fornaris, supra, Wackenhut, supra*, cited with approval in *Calero-Toledo, supra*. In *Wackenhut, supra*, the Court expressly held that:

> " 'application of the doctrine of abstention is particularly appropriate in a case . . . involv[ing] the construction and validity of a statute of the Commonwealth of Puerto Rico. For a due regard for the statutes of the Commonwealth under its compact with the Congress of the United States dictates, we believe, that it should have the primary opportunity through its courts to determine the

intended scope of its own legislation and to pass upon the validity of that legislation under its own constitution as well as under the Constitution of the United States.' "

This criteria was adopted with the specific holding that the special regard due to the Commonwealth warrants absention. If this reality is considered with the pre-Commonwealth respect and deference given by this Court to the local interpretations of the Civil Code and related statutes,[12] then the absention doctrine is even more appropriate.

In addition, abstention is more appropriate here because it would serve to avoid "the hazard of unsettling some delicate balance in the area of federal-state relationships". Justice Harlan's concurrent opinion in *Zwickler* v. *Koota,* 389 U.S. 241, 19 L. ed. 444, 454-55, 88 S. Ct. 391. Abstention in cases dealing with Commonwealth statutes clearly serves this purpose. It should be specially noted that an Ad Hoc Commission has been named to study the special relationship between Puerto Rico and the United States for the purpose of studying, of proposing legislation, and formulate recommendations tending to satisfy the aspirations of the people freely expressed in the 1967 plebiscite.[13]

[12] "Out of that experience grew a pronouncement that a Puerto Rican Court should not be overruled on its construction of local law unless it could be said to be 'inescapably wrong'. See Bonet v. Texas Co., 308 U.S. 463, 471, 84 L. ed. 401, 60 S. Ct. 349". *Fornaris* v. *Ridge Tool, supra,* 27 L. ed. 2d at 177.

[13] This Commission is a consequence of congressional action contained in Public Law 88-271 of February 20, 1964 and the action of the Legislature of Puerto Rico Law Number 9 of April 13, 1964. The present Joint Committee was appointed upon the request of the Government of Puerto Rico by the President of the United States and the Governor of Puerto Rico. Among the areas under study is the problem of aliens' entry into Puerto Rico.

In this particular case abstention is appropriate because the local ruling could avoid the necessity of passing upon the federal claim. If the statute is found unconstitutional, no further litigation is needed. On the other hand if a justification is found, then the only aspect remaining would be if the same meets the pertinent tests.

C. The Court Erred in Applying the Compelling State Interest to the Commonwealth Statutes And/Or It Erred in Rejecting the Justification Advanced by Appellants.

The District Court applied the strict test of compelling state interest following the holding in *In Re Griffiths* that classifications limiting aliens' rights and opportunities are suspect. While that test might be appropriate in dealing with the 50 States,[14] both the general nature of the Commonwealth status and the specific factual situation in regard to the aliens' presence in Puerto Rico, warrant a different approach.

We have already extensively cited the cases which recognize the special status of the Commonwealth of Puerto Rico. It is a truly unique relationship and a new concept in the constitutional scheme of this country. Thus the Court should not have automatically applied the same criteria applied to the States, especially where the States are governed by the 14th Amendment, which has never been expressly held to apply to the

[14] There are now two cases before this Court which deal with the extension of the holdings in *Sugarman* v. *Dougall,* 413 U.S. 634 (1973), 37 L. ed. 2d 910, 93 S. Ct. 2842, and *In Re Griffiths, supra,* to the Federal Government under the Fifth Amendment. *Wong Sun* v. *Hampton,* 500 F.2d 1031 (9 C. 1974), cert. granted 41 L. ed. 2d 664, and *Ramos* v. *U.S. Civil Service Comm.,* 376 F. Supp. 361 (DPR 1974), appeal filed, 43 LW 3173. These cases might serve to clarify the scope of the prior holdings.

Commonwealth. *Calero-Toledo, supra,* ft. 5 at 40 L.ed. 2d 460. There the Court extended to Puerto Rico's statutes the same deference as state statutes but that does not mean that the same test of construction is to govern both situations. Because the uniqueness of the constitutional and political relationship between the two sovereignties, purely local statutes should not be overturned unless there is no justification for them or its unconstitutionality is so obvious on its face and the government authority of the Commonwealth would be so untrammeled by the requirements of the fundamental constitutional rights, that both the United States Constitution and the Compact would be violated. The above test would not narrow the application of the fundamental rights of the people of Puerto Rico but would rather recognize the relationship between the Compact and the applicable provisions of the United States Constitution.

If the above test were to be applied, then the District Court should have found that the statute involved reasonable means to achieve legitimate local interests or that there was a rational basis for the statute.

The District Court did not consider the special and unique situation of Puerto Rico in regard to the nature of the alien problem. The latest official information is that there are over fifty-four thousand aliens in Puerto Rico. Most of these aliens come from Spanish-speaking countries.[15] Due to the common language, same cultural and historical background, same kind of climate, geography, and better educational and economic facilities in Puerto Rico, than in their original countries, these aliens tend to come to the Island rather

[15] The two appellees in this case come from Mexico and Spain.

than going to the other States where they would confront different conditions. If the Court considers that at the present time the Commonwealth is confronting serious overpopulation[16] and economic problems, especially in connection with its unemployment figure, which is almost double the national one,[17] that the per capita income is $1,834,[18] and that 76.5% of the basic food products and commodities have to be imported, thus causing generally higher prices, then the Court most find that the statute is valid and necessary. We submit that the above situation clearly establishes that the Commonwealth has either a compelling interest or a legitimate one in trying to partially control the negative effects of an uncontrolled influx of aliens into professions which can be legitimately regulated by the State, due to their impact in the public and the economy.

[16] The 1970 Census Report shows that the small island of Puerto Rico has a population 2,712,033 persons of which 52,792 are foreign born. (1970 Census Population, Detailed Characteristics, Puerto Rico, a United States Department of Commerce Publication; Table 110, page 53-601.) 851, 247,000 live in the San Juan metropolitan area, which has 43,264 foreign born. Id, at 53-603. This is due to the geography of the island and that the government and business concentrations are in this area. It should be noted that the vast majority of the foreign born are from Spanish-speaking countries. For example, there are 26,000 persons born in Cuba, 10,843 born in the Dominican Republic, 4,120 from Spain and 1,269 from Venezuela. Id. Table 112 at 53-621. There were in 1970, 5,800 Cubans living in the San Juan area. Id. 53-622.

[17] The latest official figure is 17% of the labor force. But it is suspected that the real figures come close to 30%. These problems are compounded by the vast numbers of illegal aliens who enter into the island without adequate control by the federal immigration authorites.

[18] This is far less than the per capita income of the poorest state of the United States, Mississippi, which had approximately $3,000.

This is particularly so in the case of engineers, architects and surveyors, who play a major role in the industrial and economic expansion in the island. Construction is one of the first industries in Puerto Rico, both in the private and public sectors. That is why the Civil Code has always tried to protect those citizens who might suffer injuries due to construction defects and enacted Article 1483 of the Civil Code.[19] Also the Commonwealth has a duty to assure the citizenry that these professionals who are daily entering into contracts worth millions of dollars, have a sufficient interest in remaining in the island so they can be held accountable and responsible for their tortious or illegal acts. Obviously if aliens are permitted to practice the professions herein involved without any limitations, serious problem affecting the citizenry as a whole may arise.[20]

We also submit that the decision in *Espinosa* v. *Farah Maunfacturing Co., Inc.*, 414 U.S. 86, 38 L.ed. 2d 287,

[19] See also the statutory scheme which gives the Secretary of the Department of Consumer Affairs the duty to regulate, impose fines, etc. on constructors who fail to live up to their obligations. 17 LPRA 501 to 519, as amended by Law 116 of June 7, 1963 (1974 Cumulative Pocket Supp., 17 LPRA 516 at page 6) These protections might also be affected by the decision herein.

[20] It should be noted that appellees are not prohibited from practicing their profession. Under the statute they can and are presently employed by government agencies. The statute also provides that those aliens who study their career in Puerto Rico have the right to seek an unrestricted license. Thus unlike the *Sugarman* situation, there is no undiscriminate prohibition. The legislators obviously thought that the evils to be corrected are not present in these two situations. The government engineers, etc., are only employees in public works and have an extensive supervision. The ones that complete their full studies in Puerto Rico have an interest in remaining in the island and they are already part of the community.

94 S.Ct. 334 (1973), tends to undermine the rationale in the *Sugarman* and *Griffiths* cases. *Espinosa* gives an almost absolute discretion to private employers in their hiring practices. Although it is true that *Espinosa* only interprets a federal statute, it will have far reaching effects. And the *Sugarman* and *Griffiths* effects might be further undermined if this Court rules in favor of the federal government in the cases now pending before it. (*Hampton* and *Ramos, supra*)

We repeat that in Puerto Rico the appropriate test should be that of a rational basis for legislation, in which case any valid interest would sustain the statute. *Dandridge* v. *Williams*, 397 U.S. 471, 25 L.ed. 2d 491, 90 S.Ct. 1153 (1970). But even if the compelling state interest test is used, the statute should be upheld.

CONCLUSION

For the stated reasons, we submit that the questions presented are so substantial as to require plenary considerations, with briefs on the merits and oral argument, for their resolution.

San Juan, Puerto Rico, on this 2nd day of April, 1975

MIRIAM NAVEIRA DE RODON
Solicitor General

PETER ORTIZ GUSTAFSON
Deputy Solicitor General

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL NO. 917-73

MARIA C. FLORES DE OTERJ,
Plaintiff

v.

EXAMINIG BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, composed of its members, Pedro Santiago Rivera, Leonel A. Fernandez, Genaro Negron, Juan M. Portela Soler, Guillermo Cruz Gonzalez and Milton Castro Nazario,
Defendants

Judgment

This Court having come for a final hearing before a Three Judge Court, Judges Coffin, Toledo and Pesquera sitting and the issues having been heard and the opinion of the Court having been duly rendered, Judge Pesquera dissenting,

It is ORDERED, ADJUDGED and DECREED, that Section 689 of Title 20, Laws of Puerto Rico Annotated, is unconstitutional, invalid and unenforceable to the extent indicated in the opinion; and

It is further ORDERED, ADJUDGED and DECREED, that plaintiff Maria C. Flores de Otero be licensed by defendants as an engineer; and

It is further ORDERED, ADJUDGED and DECREED that defendants are enjoined from enforcing the citizenship require-

ment of Section 689 of Title 20, Laws of Puerto Rico Annotated.

San Juan, Puerto Rico, December 19,1974.

/s/ Frank M. Coffin
Frank M. Coffin
U. S. Circuit Judge

/s/ Jose V. Toledo
Jose V. Toledo
Chief Judge, U. S. District Court

United States District Court
District of Puerto Rico

No. 917-73

Opinion

Coffin, *Curcuit Judge*. This action challenges the constitutionality of Section 689 of Title 20 of the Laws of Puerto Rico, and our jurisdiction is founded upon 42 U.S.C. § 1983 and 28 U.S.C. § 1343. Plaintiff as a native of Mexico and by profession a civil engineer. She is a resident of Puerto Rico, but not a citizen of the United States, and has been denied registration as a licensed engineer by defendants on the ground that she has failed to meet the citizenship requirement embodied in the statute.

Defendants urge that we abstain from reaching the constitutional issue and await an authoritative interpretation of the challenged statute by the courts of the Commonwealth *Railroad Comm'n* v. *Pullman Co.*, 312 U.S. 496 (1941). Such abstention would be appropriate were the statute one which was susceptible of an interpretation which would obviate the need to decide the constitutional question, *Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41 (1970), but this is not such a case. The statutory requirement of citizenship is clear and unmistakable, and no conceivable gloss placed upon it by the Supreme Court of Puerto Rico could turn aside plaintiff's

argument that this classification based on alienage is unconstitutional. We therefore decline to abstain. *Zwickler* v. *Koota*, 389 U.S. 241, 248-50 (1967); *Arias* v. *Examining Board of Refrig. & Air Cond. Technicians*, 353 F. Supp. 857 (D. P.R. 1972).

In *Arias, supra*, this court struck down as unconstitutional a citizenship requirement for admission to a profession, but found it unnecessary to decide whether the equal protection standard to be applied was rationality or "strict" review based upon the existence of an inherently suspect classification. *Id* at 861. The subsequent Supreme Court decision in *In re Griffiths*, 413 U.S. 717 (1973), established that a classification on the basis of alienage is suspect even when used to regulate entry to a profession and can be justified only by reference to a compelling state interest. *See Sugarman* v. *Dougall*, 413 U.S. 634 (1973); *Graham* v. *Richardson*, 403 U.S. 365 (1971); *Takahashi* v. *Fish & Game Comm'n*, 334 U.S. 410 (1948). We have examined each of the state interests put forward for consideration by defendants, and find none that measures up to this standard.

The suggestion that the Commonwealth may use a citizenship requirement to protect itself against an "uncontrollable invasion of alien engineers" flies in the face of the principle that discrimination for its own sake is not a constitutionally permissible purpose. *In re Griffiths, supra*, 413 U.S. at 72 n. 8. The other state interest asserted by defendants relates to Article 1483 of the Puerto Rico Civil Code (1930). That statute imposes upon a contractor liability for damages resulting from the collapse of a building within ten years of its construction. Defendants argue that a resident who does not become a citizen "is a poor risk to comply with the cited article".

There is no demonstrated relationship between citizenship and the likelihood that an individual will meet this obligation, and we think it clear that whatever link may exist is too tenuous to establish a compelling interest in denying licenses to all aliens. *In re Griffiths* is once again instruc-

tive, for there the Supreme Court rejected a proferred state justification much like that put forward here in holding that a State Bar Examining Committee had "failed to show the relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients." 413 U.S. at 724. The justification offered by the Commonwealth fails in another respect as well. Even if we were to assume that a citizen with ties to Puerto Rico is more likely to live up to the statutory obligation than a resident who is a noncitizen, we would be forced to reject any argument that a citizen with primary ties to a part of the United States other than Puerto Rico would be an appreciably better risk, with regard to the statute, than a noncitizen.

The last argument with which we must deal is defendants' contention that *Espinoza* v. *Farah Manufacturing Co.*, 414 U.S. 86 (1973), represents a repudiation of *Griffiths* and the other cases prescribing close judicial scrutiny of classifications based on alienage. The citation of *Espinoza* is inapposite. The issue decided by that case was a narrow one of statutory construction—whether the denial of private employment to aliens ran afoul of the provision in Title VII in the Civil Rights Act of 1964 forbidding discrimination on the basis of national origin—and *Espinoza* thus has no bearing upon the issue before this court.

Because we have found the citizenship requirement to be unconstitutional, defendants are directed to license plaintiff as an engineer.

So Ordered.

/s/ Frank M. Coffin
Frank M. Coffin
U.S. Circuit Judge

/s/ Jose V. Toledo
Jose V. Toledo
Chief Judge, U.S. District Court, District of Puerto Rico

Dated at San Juan, Puerto Rico, December 19, 1974.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Civil No. 917-73

Dissenting Opinion

Pesquera, District Judge, (Dissenting)

For the same reasons stated in dissenting opinion in *Santin Ramos* v. *United States Civil Service Commission and Cabrera Gomez* v. *Butz*, 376 F. Supp. 361 (May 29, 1974), I am once more constrained to dissent in this line of cases.

San Juan, Puerto Rico, December 19, 1974.

/s/ Hernan G. Pesquera
Hernan G. Pesquera
U. S. District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL No. 74-520

SERGIO PEREZ NOGUEIRO,
Plaintiff

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND
SURVEYORS OF PUERTO RICO, AND THE MEMBERS
OF SUCH BOARD,
Defendants.

Memorandum and Order

Before COFFIN, *Circuit Judge;*
TOLEDO AND PESQUERA, *District Judges.*

ENTERED.

The case presents precisely the issue decided by this Court in *Flores de Otero* v. *Examining Board* (No. 917-73) (December 19, 1974), and thus judgment will be entered for plaintiff.

San Juan, Puerto Rico, February 4, 1975.

/s/ FRANK M. COFFIN
Frank M. Coffin
U.S. Circuit Judge

/s/ JOSE V. TOLEDO
Jose V. Toledo
U.S. District Judge

Judge Pesquera dissents.

HERNAN G. PESQUERA
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

CIVIL No. 74-520

SERGIO PEREZ NOGUEIRO,
Plaintiff

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND
SURVEYORS OF PUERTO RICO, AND THE MEMBERS
OF SUCH BOARD,
Defendants.

Judgment

This action having come for a final hearing before a Three Judge Court, Judges Coffin, Toledo and Pesquera sitting, and the issues having been heard and the opinion of the Court having been duly rendered, Judge Pesquera dissenting,

It is ORDERED, ADJUDGED AND DECREED, that plaintiff Sergio Perez Nogueiro be licensed by defendants as an engineer.

San Juan, Puerto Rico, February 4, 1975.

/s/ FRANK M. COFFIN
Frank M. Coffin
U.S. Circuit Judge

/s/ JOSE V. TOLEDO
Jose V. Toledo
U.S. District Judge

/s/ HERNAN G. PESQUERA
Hernan G. Pesquera
U.S. District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil No. 917-73

Maria C. Flores de Otero,
Plaintiff

v.

Examining Board of Engineers, Architects and Surveyors, composed of its members, Pedro Santiago Rivera, Leonel A. Fernández, Genaro Negrón, Juan M. Portela Soler, Guillermo Cruz González and Milton Castro Nazario,
Defendants

Notice of Appeal

To The Honorable Court:

Notice is hereby given that the Defendants above named, hereby appeal to the Supreme Court of the United States, from the final judgment entered on this action on December 19, 1974.

This appeal is taken pursuant to 28 U.S.C. 1253.

San Juan, Puerto Rico, January 22, 1975

Miriam Naveira De Rodon
Solicitor General

Peter Ortiz
Deputy Solicitor General

[*Proof of Service Omitted in Printing*]

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil No. 74-520

Sergio Perez Nogueiro,
Plaintiff

v.

Board of Examiners of Engineers, Architects and Surveyors of Puerto Rico, and the Members of Such Board,
Defendants

Notice of Appeal

To The Honorable Court:

Notice is hereby given that Defendants, Board of Examiners of Engineers, Architects and Surveyors of Puerto Rico and Leonel Fernández, Genaro Negrón, Guillermo Cruz González, Víctor Labión, Pedro Santiago Rivera, Milton Castro Nazario and Juan M. Portela, as members of said Board, hereby appeal to the Supreme Court of the United States from the final judgment entered in this action on February 5, 1975.

This appeal is taken pursuant to 28 USC 1253.

San Juan, Puerto Rico, this 10 day of March, 1975.

Miriam Naveira De Rodon
Solicitor General

Peter Ortiz
Deputy Solicitor General

[*Proof of Service Omitted in Printing*]

APPENDIX E

§ 689. Qualifications for registration in the Board's registry

As minimum evidence, satisfactory to the Board, to show that the applicant meets the qualifications for registration as licensed engineer, architect or surveyor, or for his certification as graduate engineer or architect, the Board shall accept, as the case may be:

(1) For graduate engineer or architect:

(a) *Graduation and examination.* Graduation from a course or curriculum of engineering or architecture, of a duration of not less than four academic years or its equivalent, whose efficacy has been adequately verified, in any university, college or institute whose standing and degree of proficiency are accepted by the Board, and the passing of written examinations (validation) on the fundamental subjects of engineering or architecture.

(2) For licensed engineer or architect:

(a) *Graduation, examination and minimum experience.* A certification accrediting his graduation from a course or curriculum of engineering or architecture, of a duration of not less than four (4) academic years or its equivalent, whose efficacy has been adequately verified, in any university, college or institute whose standing and proficiency are accepted by the Board; passing of written examinations (validation) on the fundamental subjects of engineering or architecture; and detailed history of his professional experience of not less than four years, acquired after his graduation as a professional, satisfactory to the Board, and showing, in the judgment of the Board, that the applicant is qualified to practice as engineer or architect with a degree of professional responsibility which justifies his licensing. Every professional who has met the requisites required to be licensed as a graduate professional shall be relieved from the presentation of the evidence

which, for such purpose, may already be in the possession of the Board, including the passing of the examinations given by the Board when he was authorized as a graduate engineer, as provided in subdivision (1)(a) of this section. The Board may, in its discretion, consider as devoted to acquire experience, all or part of the time devoted to teaching or of higher studies of a professional nature after graduating as engineer or architect. In case the evidence submitted in the application with respect to the experience does not appear conclusive to the Board, or does not, in the opinion thereof, show the existence of sufficient guarantee and justification for the licensing, the applicant may be required to submit additional evidence on any particular thereof

(3) For licensed surveyor:

(a) *Studies, experience and examination.* Certification showing that the applicant has passed a course or curriculum in engineering lasting not less than two years, or has completed the studies in surveying, the sufficiency of which has been duly ascertained and accepted by the Board; a detailed statement of at least two years' professional experience, satisfactory to the Board, and showing, in the judgment thereof, that the applicant is qualified for the practice of surveying; and passing of written examinations (validation) on the fundamental subjects of surveying.

In addition to what has already been provided in this section, it shall be required that applicants for registration in the Board's registry be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for not less than one year before filing their applications. Provided, that the requisite of being a citizen of the United States of America shall not apply to engineers, architects and surveyors who have studied the total courses and have received their corresponding grade or certificate in the

Commonwealth of Puerto Rico provided that the approved course of study and institution where he has studied fulfill the qualifications fixed by sections 681-710 of this title, as the case may be; Provided, That the applicants shall meet all the qualifications fixed by this act for registration in the Board's registry.

The requisites of residence and United States citizenship shall not apply to engineers, architects or surveyors whom the different agencies or instrumentalities of the Government of the Commonwealth, the municipal governments and the public corporations employ or may wish to employ, it being understood that it shall not be necessary that the applicants be so employed at the time of their application or registration in the Board's registry. The applicants shall meet all the other qualifications fixed by sections 681-710 of this title for registration in the Board's registry.

Upon compliance with these requirements by a non-citizen of the United States of America, the board shall issue a conditional certificate as graduate engineer, architect or surveyor or a conditional license as engineer, architect or surveyor, as the case may be, valid for the practicing of such professions only in the performance of this employment and during the time they are employed by the above-mentioned public entities. The Board shall be empowered to establish special standards relative to the conduct, transfer of employment and absence from the Commonwealth of such certified or licensed persons, it being understood that the professional acts of said engineers, architects and surveyors shall have the same legal effects and shall be subject to the duties and laws of the Commonwealth in the same manner as the acts of the professionals registered in the Board's registry.

Any engineer, architect or surveyor holding a conditional license or graduate engineer or architect with a conditional certificate who obtains the citizenship of the United States of America shall be entitled to apply for registration and

be reregistered in the Board's registry as a graduate engineer or architect, or a licensed engineer or architect, or a licensed surveyor, as the case may be, in accordance with all the other requirements of the Board. —Amended June 99, 1964, No. 119, p. 380, § 1, eff. June 29, 1964; June 8, 1967, No. 121, p. 368, § 1, eff. June 8, 1967.